U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-J-

DATE: JULY 29, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a physician specializing in neurology, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is normally attached to this immigrant classification. *See* § 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director, Texas Service Center, denied the petition. The Director found that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of a job offer would be in the national interest.

The matter is now before us on appeal. In her appeal, the Petitioner argues that she satisfies the national interest waiver requirements.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate his or her qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences arts or business. Because this classification normally requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> > (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

> who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
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> > (i) National interest waiver. . . . the Attorney General[1] may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Matter of New York State Department of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner's assurance that he or she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. *Id.* at 219. Rather, a petitioner must justify projections of future benefit to the national interest by establishing a history of demonstrable achievement with some degree of influence on the field as a whole. *Id.* at 219, n.6.

II. ANALYSIS

The Director determined that the Petitioner qualified as a member of the professions holding an advanced degree. The sole issue in contention is whether the Petitioner has established that a waiver of

[1] Pursuant to section 1517 of the Homeland Security Act of 2002 ("HSA"), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA "shall be deemed to refer to the Secretary" of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

the job offer requirement, and thus a labor certification, is in the national interest according to the three-pronged analysis set forth in *NYSDOT*.

A. Substantial Intrinsic Merit

At the time of filing, the Petitioner was training as a neurologist at in New York. The Petitioner submitted documentation showing that her work as a physician specializing in neurology is in an area of substantial intrinsic merit. Accordingly, the record supports the Director's determination that the Petitioner meets the first prong of the *NYSDOT* national interest analysis.

B. National in Scope

The Director found that the proposed benefit of the Petitioner's work as a neurologist would not be national in scope. The Petitioner submitted a May 2014 letter from professor and chairman of the department of neurology at and director of neurology and neurosciences at stating: "With her neurologic research during her residency at [the Petitioner] has made important contributions to Neuroscience literature." In his letter, offered several examples of the Petitioner's research work at In addition, and other references discussed the Petitioner's published and presented research findings. Furthermore, since beginning her fellowship in neurocritical care at in the latter half of 2014, the Petitioner has continued to publish and present the results of her medical research. The submitted documentation shows that the proposed benefit of her neurology research has national and international scope, as the results from her work are disseminated to others in the field through conferences and journals. Accordingly, we find that the Petitioner meets the second prong of the *NYSDOT* national interest analysis, and the Director's determination on this issue is withdrawn.

C. Serving the National Interest

It remains, then, to determine whether the Petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. The Director determined that the Petitioner's impact and influence on her field did not satisfy the third prong of the *NYSDOT* national interest analysis.

In addition to documentation of her published work, conference presentations, peer review activities, research projects, professional memberships, and medical training credentials, the Petitioner submitted various reference letters discussing her work in the field. For example, stated that the Petitioner "developed multimodality monitoring and treatment protocol in patients with severe traumatic brain injury (STBI), and reported that such a protocol can decrease mortality and increase survival by 25 percent," but did not provide any examples of how the Petitioner's approach has affected treatment practices at various medical centers or has otherwise influenced the field as a whole.

professor of neurology at stated: "As a clinician-scientist, [the Petitioner] has presented her work at scientific meetings including the . . . [The Petitioner] has also published in respected journals in her field, including Regarding her published and presented work, there is no presumption that every published article or conference presentation demonstrates influence on the field as a whole; rather, the Petitioner must document the actual impact of her article or presentation. In this instance, there is no evidence showing that once disseminated through publication or presentation, the Petitioner's work has garnered a significant number of independent citations or that her findings have otherwise influenced the field as a whole.

With respect to the Petitioner's finding that a mutation in the sodium channel can lead to myotonia, a geneticist at the and an affiliate of the noted that the Petitioner's finding "had not been reported before" and "adds significant data to the study of myotonias." Similarly, assistant professor of neurology at and chief neurointensivist at indicated that the Petitioner "is conducting research on traumatic brain injury" and that her work "will add significant data to current ongoing research on monitoring the effect of flow and oxygen crisis in patients with traumatic brain injury and on treating these patients emergently." Although the Petitioner's medical research has value, any research must be original and likely to present some benefit if it is to receive funding and attention from the medical or scientific community. In order for a university, publisher or grantor to accept any research for graduation, publication or funding, the research must offer new and useful information to the pool of knowledge. Not every neurology fellow who performs original research that adds to the general pool of knowledge in the field inherently serves the national interest to an extent that is indicative of influence on the field as a whole.

and also mentioned that the Petitioner is a peer reviewer for and Regarding the Petitioner's services as a peer reviewer, it is common for a publication to ask multiple reviewers to review a manuscript and to offer comments. The publication's editorial staff may accept or reject any reviewer's comments in determining whether to publish or reject submitted papers. Thus, peer review is routine in the field, and there is no evidence demonstrating that the Petitioner's occasional participation in the widespread peer review process is an indication that she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

In addition, indicated that the Petitioner's "work regarding varicella zoster . . . is original and groundbreaking, and would be very important in shedding new light on an important clinical issue and in doing so will lead to improvement in patient care." Furthermore, regarding the Petitioner's research concerning the role of fetal stem cells in maternal cardiac care, assistant professor of neurology, noted that the Petitioner's "original and pioneering work could lead to the development of innovative stem cell therapies to treat cardiovascular diseases." While and attested to the potential impact of the Petitioner's work, they did not offer any examples indicating that her work has already impacted medical practices or

has otherwise influenced the field as a whole. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

also noted that the Petitioner authored an oral presentation entitled The Petitioner's aforementioned presented work proposed that a goal-directed multimodality monitoring and therapeutic protocol may prevent and treat secondary brain injury, and improve patients' outcome. Regarding the protocol, stated: "This novel technique showed a 32% reduction in mortality in patients with severe traumatic brain injury." added that the Petitioner's colleagues at carried on the work and published a later study in but the Petitioner was not a coauthor of the later study. There is no evidence demonstrating that the Petitioner's work has affected diagnostic or treatment protocols for brain injury patients at various medical centers, has been frequently cited by other investigators in their medical research, or has otherwise influenced the field as a whole.

With respect to the documentation reflecting that the Petitioner has presented her findings at neurology meetings and medical conferences, we note that many professional fields regularly hold meetings and conferences to present new work, discuss new findings, and to network with other professionals. Professional associations, educational institutions, healthcare organizations, employers, and government agencies promote and sponsor these meetings and conferences. Although presentation of the Petitioner's work demonstrates that she shared her original findings with others, there is no documentary evidence showing, for instance, frequent independent citation of her work, or that her findings have otherwise influenced the field of neurology at a level sufficient to waive the job offer requirement.

assistant professor of neurology, mentioned that the Petitioner "has produced innovative research that has advanced our understanding of traumatic brain injury, myotonia, varicella-zoster virus, and cardiovascular diseases," but did not provide specific examples of how the Petitioner's findings have altered assessment and treatment procedures in the medical field or have otherwise had an impact on the field of neurology. In addition, indicated that the Petitioner has demonstrated "superior ability to perform innovative diagnostic and treatment procedures" and that she "has successfully applied these procedures to treat patients." A statement that a petitioner possesses useful skills or experience relates to whether similarly-trained workers are available in the United States and falls under the jurisdiction of the U.S. Department of Labor through the labor certification process. *See NYSDOT*, 22 I&N Dec. at 221.

program director of the vascular neurology fellowship at stated that she and the Petitioner "are in the process of publishing the first-ever case report of was not exposed to chemotherapy." In addition, explained that the "novel case report will

raise awareness of impaired immunity in these patients." The Petitioner's case report, while original, was unpublished at the time of filing the Form I-140, and there is no evidence reflecting that other neurologists have implemented any of the Petitioner's findings or that her work has otherwise influenced the field as a whole.

Furthermore, professor and chairman of the department of neurosurgery, noted that the Petitioner performed research that measured brain oxygen requirements and that she studied brain metabolism in instances involving stroke and trauma. added: "The early results of this work are promising enough that further studies in a controlled setting are already under way at our medical center and we are very hopeful that this will become standard practice in the near future." did not offer any examples of how the Petitioner's work has altered the practices of other neurologists or has otherwise affected the field. While the record includes numerous attestations of the potential impact of the Petitioner's work, none of the references identified specific evidence indicating that her work has already influenced the field as a whole.

On appeal, the Petitioner provides a personal statement listing her medical experience, training qualifications, research activities, instruction of students, and honors, but as indicated above, there is no documentary evidence showing that her work has affected the field of neurology as a whole. The Petitioner mentions her article in entitled ' describing it as a significant contribution to the field, but she did not submit any corroborating documentation to support the claim. In addition, the Petitioner indicates that her work has been presented at "prominent" and "influential forums." With regard to her journal articles and conference presentations, a substantial number of favorable independent citations for an article or presentation is an indicator that other researchers are familiar with the work and have been influenced by it. A lack of citations, on the other hand, is generally not suggestive of the work's impact in the field. In this case, there is no evidence demonstrating that the Petitioner's research findings have garnered a significant number of independent citations or that her work has otherwise affected the field as a whole.

The Petitioner contends that the "testimonials from peers" are "primary evidence of her elite clinical skills." The Petitioner mentions her "unique" and "critical" roles "within major academic teaching hospitals." With respect to the Petitioner's hospital duties and clinical skills as a physician and neurologist, any objective qualifications that are necessary for the performance of the occupation can be articulated in an application for labor certification. *See NYSDOT*, 22 I&N Dec. at 220-21. The testimonial letters discussing the Petitioner's medical skills and research projects have already been addressed above. Again, the submitted evidence does not show that the Petitioner's work has had an impact on the field as a whole as to warrant a waiver of the job offer. Regarding the Petitioner's neurology fellowships, house staff appointments, and medical residency training, there is no indication that the Petitioner's roles had an impact beyond the patients and staff at her hospitals. Furthermore, there is no evidence showing that the Petitioner's work as an evaluator, teacher, or clinician has influenced the field as a whole.

The Petitioner submitted letters of varying probative value. We have addressed the specific affirmations above. Generalized conclusory assertions that do not identify specific contributions or

their impact in the field have little probative value. *Id.* In addition, uncorroborated statements are insufficient. *See Visinscaia v. Beers*, 4 F.Supp.3d 126, 134-35 (D.D.C. 2013) (upholding USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field); *See also Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that an agency "may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony," but is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought and "is not required to accept or may give less weight" to evidence that is "in any way questionable"). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the petitioner's eligibility. *Id. See also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). As the submitted reference letters did not establish that the Petitioner's work has influenced the field as a whole, they do not demonstrate her eligibility for the national interest waiver.

III. CONCLUSION

Considering the letters and other evidence in the aggregate, the record does not establish that the Petitioner's work has influenced the field as a whole or that she will otherwise serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. The Petitioner has not shown that her past record of achievement is at a level sufficient to waive the job offer requirement which, by law, normally attaches to the visa classification she seeks.

A plain reading of the statute indicates that it was not the intent of Congress that every advanced degree professional or alien of exceptional ability should be exempt from the requirement of a job offer based on national interest. Although a petitioner need not demonstrate notoriety on the scale of national acclaim, she must have "a past history of demonstrable achievement with some degree of influence on the field as a whole." *Id.* at 219, n.6. On the basis of the evidence submitted, the Petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of S-J-*, ID# 17475 (AAO July 29, 2016)